

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DONALD HEIMSTAEDT and TODD KORTE,

Plaintiffs,

-against-

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP  
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,  
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,  
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT  
SHARING PLAN, and XYZ TRUSTEES OF THE  
MCQUAY NEW YORK, LLC 401 (K) PROFIT  
SHARING PLAN,

Defendants.  
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Defendant, Prem.Air Group, LLC (“Prem.Air Group”), by its attorneys, Arthur J. Semetis,  
P.C., answers the Second Amended Complaint (the “Second Amended Complaint”), upon  
information and belief, as follows:

**AS AND FOR A RESPONSE  
TO THE INTRODUCTION**

1. Denies knowledge or information sufficient to form a belief as to the truth of the  
allegations set forth in paragraph 1 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO JURISDICTION AND VENUE**

2. Denies knowledge or information sufficient to form a belief as to the truth of the  
allegations set forth in paragraphs 2 and 3 of the Second Amended Complaint.

Case No.: 07CIV9389

**ANSWER OF  
PREM.AIR GROUP LLC  
TO SECOND AMENDED  
COMPLAINT**

(Rakoff, J)

**AS AND FOR A RESPONSE  
TO THE PARTIES**

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 4, 5, 6, 9, 11 and 12 of the Second Amended Complaint.

4. Admits the truth of the allegations set forth in paragraph 7 of the Second Amended Complaint.

5. Denies the truth of the allegations set forth in paragraph 8 of the Second Amended Complaint as to defendant Prem.Air Group, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in the paragraph 8 of the Second Amended Complaint.

6. Admits the truth of the allegations set forth in paragraph 10 of the Second Amended Complaint that Koutsos is a member of Prem.Air Group, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in the paragraph 10 of the Second Amended Complaint

**AS AND FOR A RESPONSE TO THE  
FACTS COMMON TO ALL COUNTS**

7. Denies the truth of the allegations set forth in paragraphs 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 in the Second Amended Complaint as to Prem.Air Group and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph paragraphs 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the Second Amended Complaint.

8. Denies the truth of the allegations set forth in paragraphs 16, 17 and 21 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
COUNT I**

9. In response to paragraph 33 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 32 of the Second Amended Complaint as if fully set forth herein.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 34, 35 and 36 of the Second Amended Complaint.

11. Denies the truth of the allegations as to defendant Prem.Air Group set forth in paragraphs 37, 38, 39, 40, 41, 42 and 43 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 37, 38, 39, 40, 41, 42 and 43 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO COUNT II**

12. In response to paragraph 44 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 43 of the Second Amended Complaint as if fully set forth herein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the Second Amended Complaint.

14. Denies the truth of the allegations as to defendant Prem.Air Group set forth in paragraphs 46, 47 and 48 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 46, 47 and 48 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO COUNT III**

15. In response to paragraph 49 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 48 of the Second Amended Complaint as if fully set forth herein.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 50 and 51 of the Second Amended Complaint.

17. Denies the truth of the allegations as to defendant Prem.Air Group set forth in paragraphs 52, 53 and 54 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 52, 53 and 54 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO COUNT IV**

18. In response to paragraph 55 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 54 of the Second Amended Complaint as if fully set forth herein.

19. Denies the truth of the allegations as to defendant Prem.Air Group set forth in paragraphs 56, 57 and 58 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 56, 57 and 58 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO THE COUNT V**

20. In response to paragraph 59 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 58 of the Second Amended Complaint as if fully set forth herein.

21. In response to paragraphs 60 through 67, Prem.Air Group states that pursuant to the Court's Decision and Order dated April 29, 2008, Count V to this Complaint has been dismissed.

**AS AND FOR A RESPONSE  
TO THE COUNT VI**

22. In response to paragraph 68 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 67 of the Second Amended Complaint as if fully set forth herein.

23. Denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 69 and 70 of the Second Amended Complaint.

24. Denies the truth of the allegations as to defendants Prem.Air Group set forth in paragraphs 71, 72 and 73 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 71, 72 and 73 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO THE COUNT VII**

25. In response to paragraph 74 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 73 of the Second Amended Complaint as if fully set forth herein.

26. Denies the truth of the allegations as to defendant Prem.Air Group set forth in paragraphs 75 and 76 of the Second Amended Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 70 and 71 of the Second Amended Complaint.

**AS AND FOR A RESPONSE  
TO THE COUNT VIII**

27. In response to paragraph 77 of the Second Amended Complaint, Prem.Air Group repeats, reiterates and re-alleges its responses to paragraphs 1 through 76 of the Second Amended Complaint as if fully set forth herein.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 78 through 81 of the Second Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

29. The Second Amended Complaint fails to state a cause of action upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

30. Plaintiffs' claims are barred by the applicable statute of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

31. Plaintiffs' claims are barred by the doctrine of unclean hands.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

32. Plaintiffs' were never employed by Prem.Air Group.

**WHEREFORE**, Prem.Air Group, LLC, respectfully demands judgment against Plaintiffs as follows:

- a) Dismissing Plaintiffs' Second Amended Complaint in its entirety; and

b) Awarding attorney's fees, costs and disbursements and interest.

Dated: New York, New York  
June 2, 2008

Arthur J. Semetis, P.C.

/s/

By: \_\_\_\_\_  
Arthur J. Semetis. (AJS-8477)  
Attorneys for *Prem.Air Group, LLC*  
286 Madison Avenue, 14<sup>th</sup> Floor  
New York, New York 10017  
(212) 557-5055

CERTIFICATE OF SERVICE

**CONSTANTINE T. TZIFAS**, an attorney duly admitted to practice before United States District Court of the Southern District of New York affirms under the penalties of perjury:

On June 3, 2008, deponent served the within “ANSWER TO SECOND AMENDED COMPLAINT” upon:

Cole, Schotz, Meisel, Forman & Leonard, P.A.  
900 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10022

by delivering true copies, via first class mail under the exclusive custody and control of the U.S. Postal Service, of same to the above addresses.

Dated: June 3, 2008

/s/

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Constantine T. Tzifas